

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1294 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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OSWAL TRADING CO.

Versus

CHANDRABEN RAMANLAL  
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Appearance:

MR MB GANDHI for Petitioners  
MR VC DESAI for Respondent No. 1 & 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/03/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. This revision application arises from the order of the small causes court No.5, Ahmedabad, dated 9.8.99 in

H.R.P. Suit No.3673 of 1986. Under this order, the application filed by petitioners ex.92 seeking permission to take the written statement on record came to be rejected.

#. The plaintiffs-respondent Nos.1 and 2 filed the suit aforesaid against the respondent No.3 (deleted) and petitioners herein for their eviction from the suit premises on the ground of arrears of rent as well as subletting. The suit premises is situated at 240, First Floor, New Cloth Market, Outside Raipur Gates, Ahmedabad. The petitioner-defendant No.1 is a partnership firm. The petitioner-defendant No.2 is a company. During the course of arguments, the learned counsel for the respondents filed a xerox copy of the certified copy of the certificate of registered address of the petitioner No.2 company and this is the same address which is the address of suit premises. This suit has been filed in the year 1986. This application has been filed by petitioners when evidence of the plaintiff and respondent No.3-defendant No.1 has been completed. Even arguments of plaintiffs' counsel have been concluded and arguments of defendant No.1-respondent No.3 were in progress. It is case of petitioners that summons of the suit were not properly served upon them. They came to know about the suit when the talks between the partners and the manager of defendant No.1 (respondent No.3 herein) were going on and they came to know that the matter is ex parte against them. It is not in dispute that Mr.Narpatsingh Sardarmal Lunia was produced as witness by defendant-respondent No.3 in the suit. It is also not in dispute that Mr.Narpatsingh Lunia is the partner of the firm-petitioner No.1 (defendant No.2 in the suit). Narpatsingh Lunia is the person who admittedly signed the written statement filed by defendant No.1 (respondent No.3 herein) in the suit. The application ex.92 filed on behalf of respondents No.2 and 3 is also signed by Narpatsingh Lunia. On this fact also there is no dispute. From these facts, it no more remains in doubt that defendants No.1, 2 and 3, i.e. petitioners and respondent No.3 are closely related and known persons. The summons of the suit of petitioners No.2 and 3 were served upon the suit premises by affixing. It is also case of petitioners that those summons were returned back by defendant No.1 to the court. If we go by these facts, it can safely be presumed that the petitioners were very well known of the fact of filing of the suit but they have deliberately not put appearance in the suit. The suit has been filed in the year 1986 and this application has been filed on 21st June 1997, i.e. after 13 years. Looking to the facts of this case that Narpatsingh Lunia

is the partner of petitioner No.1, he signed the written statements of defendant No.1 - respondent No.3, he was examined as witness for defendant No.1 - respondent No.3 and the application ex.92 has been signed by him, this application is certainly not a bonafide application. It is filed only for the reason to give fresh life to the old suit which has now reached to the final stage. It is a malafide application and rightly it is held so by the learned trial court. It also appears to be an attempt on the part of the petitioners to fill up the gap in evidence. They have full knowledge of the proceedings and rightly the learned trial court in these facts has not permitted them to file written statements on the record. Silence on the part of these petitioners for this long period is also very important. Above that, reason given that they came to know about these proceedings only after the evidence of defendant No.1 from the discussion of the partners with the manager, clearly goes to show that it is only a manufactured and concocted ground. The manager of defendant No.1 was none other than the partner of petitioner No.1. In the facts of the case, it is not only a malafide application but clearly an abuse of the process of the court. The learned trial court has not committed any illegality much less material irregularity in exercise of jurisdiction in rejecting this application. The registered office of petitioner No.2 is the suit premises and as per the provisions of the Civil Procedure Code, notice of the suit has to be served on the company at its registered address. That has been done in the present case. In the result, this civil revision application fails and the same is dismissed. Rule discharged. It is a case where exemplary costs have to be awarded and accordingly the petitioners are directed to pay Rs.5,000/= as costs of this civil revision application to respondents No.1 and 2.

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(sunil)